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Suppression of Lotteries.

S P E E C H

OF

HON. EDWARD W. ROBERTSON,

OF LOUISIANA,

IN THE HOUSE OF REPRESENTATIVES,

Saturday, February 24, 1883,

On the bill (H. R. 7563) for the more effectual suppressing and preventing of lotteries by prohibiting the transmission through the mails of publications containing lottery advertisements.

Mr. ROBERTSON said:

Mr. SPEAKER: The question of depriving lotteries the use of the mails is one of serious import to the good people of my State, as also to the law-abiding population of the whole country. Deprive the Louisiana State Lottery Company of the right to carry on its false and fraudulent schemes and devices to deceive and defraud the public as it is now doing every day through its monopoly of the United States mails, and it will be effectually crushed out of existence.

The people of Louisiana will no longer be cursed with the infamy of its debasing influence so notoriously exhibited in our legislative halls and elsewhere during the past three years. Forbid it to enter the United States mail and "its occupation's gone." It will die the death of all such gambling institutions, or, restricted to such narrow limits in its nefarious operations, it will cease to exercise its corrupting influence in politics. Through the connivance of the Postmaster-General in a plain, palpable violation of existing postal laws, which his predecessor enforced and was sustained by the courts, the Louisiana State Lottery Company now enjoys the exclusive privilege of the mails, while all other lotteries are prohibited. Before entering into a discussion on this particular point, it may be well to take a cursory glance of these institutions as they have previously existed in England and this country.

The history of lotteries as a measure of government finance is comparatively of modern origin. Menestrier, who wrote on this subject toward the close of the seventeenth century, ascribes to the Republic of Genoa the invidious distinction of first originating the institution as an adjunct of taxation of the masses. Certainly it spread with frightful rapidity, as we find it domesticated in France early in the sixteenth century, and with its usual concomitants, crime, misery, and poverty. From France it crossed the Channel to England, and the first drawing, it is said, took place at the west door of the cathedral of St. Paul, in London, about the middle of the sixteenth century. Maitland of Stowe informs us of the existence of three offices in the kingdom as early as 1569. It is a lamentable fact that the colonization of America was first attempted by the mother country through the means of these institutions. The earliest statute to be found on this subject was passed by the English Parliament, *temp.* Jac. I, for the purpose of the colonization of Virginia. To the honor of Massachusetts, before the close of the seven-

teenth century we meet with the proceedings at a meeting held at Boston in the last year of that century in which the ministers "denounce the lottery as a cheat and its agents as pillagers of the people."

The different sects of the Protestant religion have ever since, with singular unanimity, denounced this species of gambling, and though legislative sanctions, under the guise of public works and the pretense of fostering public education or the support of charitable institutions, have granted charters "to pillage the people," yet the influence of the better classes have always been thrown in the scale on the side of stifling such potent measures for the degradation and eventual ruin of the people.

As early as 1762 the Assembly of the Colony of Pennsylvania passed a law under severe penalties prohibiting any and all lotteries, and now in nearly every State in this Union that existed formerly as colonies under the crown of Great Britain we find laws of similar import dating about or subsequent to that period. As this act of the Assembly, passed on the 17th day of February, 1762, was the beginning of subsequent legislation on the subject in the different States, I give it in full as the best exposition of the sentiments of our ancestors in expressing their abhorrence of this great adjunct in reducing the people all to the same dead level of wretchedness, pauperism, and crime:

An act for the more effectual suppressing and preventing of lotteries.

Whereas many mischievous and unlawful games, called lotteries, have been set up in this province, which tend to the manifest corruption of youth and the ruin and impoverishment of many poor families; and

Whereas such pernicious practices may not only give opportunities to evil-disposed persons to cheat and defraud the honest inhabitants of this province, but prove introductive of vice, idleness, and immorality, injurious to trade, commerce, and industry, and against the common good, welfare, and peace of this province: For remedy whereof, be it enacted, that—

1. SECTION 1. All lotteries whatsoever, whether public or private, are common and public nuisances, and against the common good and welfare of this province.

SEC. 2. No person or persons whatsoever shall publicly or privately set up, erect, make, exercise, keep open, show, or expose to be played at, drawn, or thrown at, any lottery, play, or device, or shall cause or procure the same to be done either by dice, lots, cards, balls, tickets, or any other manner or way whatsoever, and every person or persons that shall set up, erect, make, exercise, keep open, show, or expose to be played at, drawn, or thrown at, any such lottery, play, or device, or that shall cause or procure the same to be done, after the publication of this act, and shall be thereof legally convicted in any court of quarter sessions within the jurisdiction whereof the said offenses shall be committed, or in the supreme court if thereunto removed from any of the inferior courts, within this province, shall forfeit and pay the sum of £500 lawful money of Pennsylvania.

2. SEC. 3. All and every person and persons whatever that shall buy, sell, or expose to sale, or that shall advertise or cause to be advertised the sale of any ticket or tickets, or device whatsoever, in such lotteries, plays, or devices, or that shall be aiding, assisting, or in anywise concerned in managing, conducting, or carrying on such lotteries, plays, and devices, by whatsoever name the same may be called, and be legally convicted thereof in either of the courts aforesaid, shall forfeit and pay the sum of £20, lawful money of Pennsylvania, for every such offense.

3. SEC. 4. All and every person and persons whatsoever that shall within this province buy, sell, or expose to sale, or shall advertise, or cause to be advertised, the sale of any ticket or tickets, or other device whatsoever, in any lottery, play, or device whatsoever, which shall be hereafter set up, erected, made, exercised, kept open, shown, or exposed, to be drawn at, played at, or thrown at, in or at any place or places out of this province (State lotteries erected and licensed by the act of Parliament in Great Britain only excepted and foreprized), and be thereof legally convicted in manner aforesaid, shall forfeit and pay the sum of £20, lawful money of Pennsylvania, for every such offense.

SEC. 5. All the fines, forfeitures, and penalties hereby inflicted shall be paid to the overseers of the poor of the city, borough, or township, where any of the said offences shall be committed.

A perusal of this act will show how our ancestors regarded this pest to all moral social obligations of the people. The proviso which saved from the general prohibition "all State lotteries enacted and licensed by act of Parliament in Great Britain" only shows the involuntary serv-

itude in which the colonial assemblies were kept by the mother country.

These state lotteries continued in Great Britain down to the beginning of this century, when a combined attack was made in Parliament to prevail upon the government to discontinue this manner of raising a revenue. Though chancellor after chancellor of the exchequer fought to retain this mode of taxation which produced several millions sterling annually toward the budget, yet, by the efforts of Wilberforce, Canning, and Buxton in the House of Commons, and Lyttleton and Castlereagh before and after their elevation to the House of Peers, Eldon, Wellington, Peel, and their other opponents were silenced, and the last drawing took place in October, 1826, and this fruitful source of crime, poverty, and wretchedness was effectually suppressed, never again to rear its head in the territory of Great Britain. During this long contest it was clearly demonstrated that no greater enemy ever existed than lotteries to prevent the accumulation of wealth by the poorer and middle classes, and in every country where they exist savings banks have always proved a failure. The night of the drawing of one lottery, capital prize £100,000, was signalized with over fifty suicides of unlucky purchasers of tickets.

The facts elicited by the examinations of the different committees of the House of Commons, taken at the solicitation of philanthropists deeply interested in putting an end to the crying evils engendered by lotteries, are almost incredible to any one but who has lived in scenes where the curse exists. The magistrate on the bench, the preacher in the pulpit, the guardian of the peace, the collector of the poor rates, the warden of the prison, the custodian of pledges pawned, were all with singular unanimity denunciatory of the frightful injury that came under their cognizance, and which affected all the different walks of life. It made bad husbands, bad wives, bad children, and bad servants, the most fruitful source of suicide, and hardly a day passed that one of its votaries did not hang himself or cut his throat from disappointment and impotent rage. Such was the testimony obtained from disinterested witnesses drawn from every class of life, and it was particularly noted that women and minors were the most easily tempted to invest their savings in this maelstrom in which honor and virtue was frequently wrecked.

One of the reports on this subject by a committee of the House of Commons thus closes :

Your committee are conscious that they are far from having exhausted the grounds which might be urged, that the lottery ought not to be resorted to as a financial resource. The reasoning upon them appears to your committee to apply with peculiar force to the situation, the habits, and all the circumstances of a great manufacturing and commercial nation, in which it must be dangerous in the highest degree to diffuse a spirit of speculation, whereby the mind is misled from those habits of continued industry which insure the acquisition of comfort and independence, to delusive dreams of sudden and enormous wealth, which most generally end in abject poverty and complete misery.

We now return to the history of lotteries in this country. In 1834 the Pennsylvania Society for the Suppression of Lotteries was formed at Philadelphia and issued an address to the people of Pennsylvania and the United States, and chiefly by its indefatigable and untiring efforts this species of gambling, with the exception of some few trifling enterprises for local improvements, was suppressed in every State of the Union when the late civil war was so unfortunately inaugurated in this country.

In a report of individual cases collected and published by this society in 1837, the following forms the introduction:

If a committee were appointed by each of the State Legislatures to ascertain from living witnesses the effects of lotteries within their respective jurisdictions a mass of private distress and public injury would be brought to light, the magnitude of which it is difficult to conceive. We should witness the severance of

the closest and dearest connections of life, the violation of the sacred vows of wedlock, and the disruption of the tender ties of consanguinity and nature. Woe would meet our gaze in the various forms of hopeless bankruptcy, cheerless and unmitigated penury, incurable intemperance and infamous vice. But it may be well for the reputation of the country that some of these dread consequences may still be concealed. The colors of the picture would be too somber—the scene, in its collected deformity, too hideous for exposure to the open day. In attempting, therefore, a miniature sketch from private sources of the results which this engine of human misery and debasement has effected, we shall do all that is within our power in ranging and grouping together a few examples under appropriate heads.

Then follows several hundred cases under the heads of frauds, larcenies, robberies, embezzlements, fraudulent bankruptcies, intemperance, and suicide, and presenting the same sad features of private history that was brought to life in the investigations instituted by the British Parliament. The lottery speculator in both countries meets with the same sad fate:

He becomes poor by successive losses. His poverty leads him to petty villainies. He slowly proceeds from one impropriety to another, till at last his feelings become blunted and his reputation is tarnished. Low dissipation and idle phantasms of golden showers, from being long indulged, have so impaired his faculties and weakened his character, as wholly to destroy his ability for any useful pursuit. He looks around for assistance, but the avenues are closed. He is in debt beyond the hope of extrication. His native energy is gone, and his respectability is wasted. Thus prepared for some reckless effort to repair his fortunes, where can he seek refuge but in the principles he has imbibed? What counsellors can he listen to but his desperation and necessities?

On this subject I can not withstand the temptation to quote the words of that eminent divine, Dr. Rankin, of this city, as delivered in a sermon recently on "the inability of the law:"

Good laws are easily made, but to enforce a good law requires good men, men in sympathy with it, men who will not wink at its violation. The laws in this District against gambling are openly infringed every day of the year.

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There is nothing more destructive to habits of honest industry where a man earns his bread by square, solid labor, where for every day's work comes a day's pay, than any appeal to chance. Industry can pit itself against wages, but not against chance. The daily papers which advertise the great lotteries of the Southwest and South are doing an immense injury to the workmen of this country. You get your \$10,000 prize. It sets you on your feet. But do not be too exhilarated. Where does it come from? It comes from 1,000 men whose wives and children needed for the comforts and blessings of daily life. Every one of those thousand expected that \$10,000. Spend every dollar of it, as of course you intend to do, for benevolences and charities, you can not put it back where it belongs; you can not undo the harm which has been done to those 1,000 families. You can not undo the harm which has been done the morals of society.

An article on the "lottery business" appeared recently in an evening journal of this city, which gives but a faint idea of the extent of the evil as existing in the District of Columbia. I give the following extracts:

The recent police raids on the alleged agents of the lottery companies furnish some interesting facts as to the extent of the lottery business in this city, and the number and classes of persons who deal in it. The paraphernalia of the offices is confiscated by the police, and consists principally of tickets in envelopes addressed to persons and those which have not been sold, also order books and the correspondence of customers.

The information gleaned from these documents shows that the lottery business is becoming quite an institution of this city, and it is stated by those who have investigated the subject that more tickets are sold in this city in proportion to the population than in any other city in the country. It is estimated that \$20,000 would be a low estimate for the amount that is monthly paid in this city for lottery tickets. This unusual large traffic in lottery tickets here is explained by those well posted in the business to be due to the large percentage of our people being employes of the Government who have more money to spend than the average citizen. The traffic is not, however, confined to those who have considerable money or make comfortable salaries, for the order-books and other information show that there is almost an incredible number of comparatively

poor people who deal regularly if not largely in lottery. The well-to-do class say that they can invest a small sum every month and never miss it.

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The next class is the clerks who do not generally accumulate much wealth, but who, as a rule, spend all they get; say that they can spare the price of a ticket without missing it, and thereby stand a chance of drawing large prizes. A list of the names on the books and correspondence of an office recently raided shows that the people in every walk of life are trying to make a fortune out of the lottery. There were even names of ministers of the Gospel and judges who had bought tickets and took the same chances of winning prizes as other mortals. The heaviest individual buyers are principally merchants, some of whom buy largely every month.

The largest number of names of any one class on the books are those of Department clerks. Names of mechanics form no small portion of the list, and the old pensioner often tries his luck. In a recent drawing an inmate of the Soldiers' Home held twelve tickets. Even the name of the poor washerwoman is not absent from the list, and often when people of this class can not raise sufficient money to get a whole ticket they chip in and buy one jointly. Comparatively few, of course, get prizes, but the game has a strange infatuation for many of them. They have a great deal of confidence in it and keep on buying with the hope of ultimately getting a large prize.

On August 11, 1868, the Legislature of Louisiana passed an act entitled "An act to increase the revenues of the State and to authorize the incorporation and establishment of the Louisiana State Lottery Company, and to repeal certain acts now in force." This act was approved and took effect as act No. 25 on August 23, 1868.

The following are sections to which I wish to call particular attention:

Section 1. *Be it enacted, &c.*, That whereas many millions of dollars have been withdrawn and lost to this State by the sale of Havana, Kentucky, Madrid, and other lottery tickets, policies, combinations, and devices and fractional parts thereof, it shall hereafter be unlawful to sell, offer or expose for sale any of them or of any other lottery, policy, or combination ticket or tickets, devices, or certificates, or fractional parts thereof, except in such manner or by such persons, their heirs, executors, and assigns, as shall be hereinafter authorized.

Section 2. That the following-named persons, to wit, Robert Bloomer, Jesse R. Irwin, John Considine, Charles H. Murray, F. F. Wilder, C. T. Howard, Philip N. Luckett be, and they are hereby, constituted and declared a corporation for the objects and purposes, and with the powers and privileges hereinafter specified and set forth:

ARTICLES OF INCORPORATION.

Article 1. The name and title of this corporation shall be the Louisiana State Lottery Company, and the domicile thereof shall be in the city of New Orleans, in the State of Louisiana.

Article 2. The objects and purposes of this corporation are:

First. The protection of the State against the great losses heretofore incurred by sending large amounts of money to other States and foreign countries for the purchase of lottery tickets and devices, thereby impoverishing our own people.

Second. To establish a solvent and reliable home institution for the sale of lottery policies and combination tickets, devices and certificates, fractional parts thereof, at terms and prices in just proportion to the prizes to be drawn, and to insure perfect fairness and justice in the distribution of such prizes.

Third. To provide the means to raise a fund for educational and charitable purposes for the citizens of Louisiana.

Article 3. The capital stock of this corporation shall be \$1,000,000, represented by 10,000 shares of \$100 each.

Article 4, section 1. The company shall have the right to commence operations when \$100,000 of stock is subscribed and paid in.

Section 2. All powers of this corporation shall be vested in a board of directors, to consist of seven persons, each of whom shall own at least ten shares of the capital stock.

Section 3. The corporation shall have the right to sue and be sued, to plead and be impleaded, and to appear in any court of justice, and to do any other lawful act such as any person or persons might do for their own defense, interest, or safety.

Section 4. The president of the board of directors shall be the proper person upon whom to serve citations, notices, and other legal process wherein this corporation may be interested.

Article 5, section 1. The corporation shall pay to the State of Louisiana the sum of \$40,000 per annum, which sum shall be payable quarterly in advance, from and after the 1st day of January, 1869, to the State auditor, who shall deposit the same in the treasury of the State, and which sum shall be credited to the educational fund, and said corporation shall be exempt from all other taxes

and licenses of any kind whatever, whether from State, parish, or municipal authorities.

Section 2. The corporation shall furnish bonds to the auditor in the sum of \$50,000 as security for prompt and punctual payment of the sums set forth in the preceding section.

Section 3. That any person or persons selling, or offering or exposing for sale, after the 31st day of December, 1868, any lottery, policy, or combination tickets, devices or certificates, or fractional parts thereof, in violation of this act and of the rights and privileges herein granted to this corporation, shall be liable to said corporation in damages in a sum not exceeding \$5,000, nor less than \$1,000 for each offense, recoverable by suit before any court of competent jurisdiction.

Section 4. That this corporation shall be and continue for and during the term of twenty-five years from the 1st day of January, 1869, for which time it shall have the sole and exclusive privilege of establishing and authorizing a lottery, or series of lotteries, and selling and disposing of lottery tickets, policy, combination devices and certificates, and fractional parts thereof.

It was maintained by the Louisiana State Lottery Company in a number of cases, for they were soon embarked on the sea of litigation to uphold the extraordinary powers which they claimed:

First. That neither the constitution of 1864 or 1868 forbid lotteries, but left the matter to the discretion of the Legislature.

Second. The creation of a corporation by a State Legislature, for any purpose not prohibited by the constitution, was a contract between the State and the corporation.

Third. The mere franchise to be a corporation was a contract between the State and the corporation.

Fourth. The lottery franchise granted by the Legislature was a valid contract.

Fifth. The contract was that the company should have a corporate existence for twenty-five years and that it should have during that period the exclusive right to set up lotteries and sell lottery tickets.

All these points in a series of decisions in both the State and Federal courts were decided in their favor.

We challenge the world to produce legislation more infamous than the above. The records of no government in ancient or modern times contain a law more atrocious in every feature or so complete an abdication of the law-making power. The human mind can scarce realize the grant of such unlimited power as is conferred by this statute. It is a permit to inflict every injury to the property and liberty of the citizen by the utterly irresponsible agency of a soulless corporation. No supervision could be exercised over its extraordinary powers of monopoly, and it was even excused from making any statement to the grantor whatsoever. If such a grant had been made to carry on a legitimate branch of business it would have been had enough in all conscience; but fancy these extraordinary powers being intrusted to exercise a notoriously theiving, swindling, and cheating manner to plunder the people. No check was prescribed as to the mode of swindle, either by the issue of fictitious combinations, prizes offered but never drawn, policy numbers played without a chance to win, every variety of invention which the craft of men might use to rob his fellow man—all these were permissible under this extraordinary grant.

Thus it will be seen the Louisiana State Lottery Company was incorporated under an act of the Legislature with the rather anomalous title, "An act to increase the revenues of the State and to authorize the incorporation and establishment of the Louisiana State Lottery Company, and to repeal certain acts now in force." This act to authorize the incorporation and establishment of a State lottery company really established the institution, a fact which the reader of the title is not apprised of, but which he is supposed to know by intuition.

Howell, J., in dissenting opinion expressed in the case of the Louisiana State Lottery Company *vs.* Richoux (23 La. Ann., 746), says:

I am not prepared to concur in the opinion of the court maintaining the constitutionality of the act of the Legislature by which, it is claimed, the Louisiana State Lottery Company was incorporated. Its title does not in my opinion conform to the one hundred and fourteenth article of the constitution.

The supreme court of the State of Louisiana having then declared the act constitutional, it organized, under the extraordinary privileges granted therein, a private detective police force, and proceeded to arrest all parties who interfered with its special right of monopoly. The State virtually abandoned to this irresponsible institution the highest prerogatives of sovereignty, and the sanctity of the dwelling was ruthlessly invaded under the pretense of searching for lottery tickets.

At the session of the General Assembly which began in January, 1879, an act was passed, which was approved March 27, for the purpose of repealing the charter of the lottery company and also to make the business authorized thereby unlawful.

Section 1 of this act repealed the act approved August 23, 1868, by which the lottery company was incorporated and all other laws passed in the interest of the said institution.

Section 2 declared:

That the Louisiana State Lottery Company be, and the same is hereby, abolished and prohibited from drawing any and all lotteries, or selling lottery tickets, either in its corporate capacity or through its officers, directors, stockholders, members, or agents, directly or indirectly.

Section 3 declared:

That whoever shall sell, barter, or exchange, give or otherwise dispose of, or offer to sell, barter, or exchange, give or otherwise dispose of, directly or indirectly, personally or through an agent or agents, either for himself or others, or shall draw any lottery, or have any connection with or interest in the drawing of any lottery in this State, or shall have in his possession within this State, with intent to sell or offer for sale, or with intent to barter or exchange, or give or otherwise dispose of any lottery tickets or shares, or fractional part thereof, or lottery policy or combination, device or any other writing, certificate or token, intended or purporting to entitle the holder or bearer, or any other person, to any prize, or share or interest in any prize drawn, or to be drawn, in any lottery, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be condemned for each offense to, and shall suffer imprisonment in, the parish prison or jail, as the case may be, not exceeding sixty days, or fined not exceeding \$100, or both, at the discretion of the court; one-half of such fine to go to the informer, and the other half to the city of New Orleans, or the parish in which said offense is committed, as the case may be.

Section 4 declared:

That every person who shall set up or promote any lottery in this State, or shall assist or be interested therein, or shall aid by printing or writing, or shall in any way be concerned in setting up, promoting, managing, or drawing of any lottery, or shall be in any house, shop, or building owned or occupied by him or under his control, knowingly permit the setting up, managing, or drawing any such lottery, or the sale of any lottery tickets or share of a ticket, or any other writing, certificate, bill, token, or other device, purporting or intended to entitle the holder, bearer, or any other person, to any prize, or share of or interest in any prize to be drawn in a lottery, shall be guilty of a misdemeanor, and on conviction shall suffer imprisonment not to exceed sixty days, or a fine not exceeding \$500, or both, at the discretion of the court, for each offense; one-half of such fine to go to the informer and the other half to the parish or the city of New Orleans, as the case may be, in which such offense is committed.

Immediately after the passage of this bill the officers of State attempted to enforce the penal provisions of the act, but were met by the action of the United States circuit court for the district of Louisiana, at the instance of the Louisiana State Lottery Company, Charles T. Howard, a citizen of Mississippi, and John A. Morris, a citizen of New York. On the 1st day of April, 1879, a bill of complaint was filed by these parties on the equity side of the above court against Allen Jumel, State auditor, and twelve other citizens of the State of Louisiana, and

against the city of New Orleans. The charge of the bill was that this repealing act was an impairment of the obligation of the contract between the lottery company and the State of Louisiana contained in the act of August 11, 1868, and was in violation of the Constitution of the United States, and therefore null and void.

The bill further alleged as follows:

The several defendants are officers of the State, concerned in the enforcement of the laws of the State, without regard to the supreme law of the land, and unless restrained by order of the court they will engage in the arrest of every agent, servant, clerk, or tenant of the lottery company, and that the machinery of the penal code will be by them set in motion to enforce the said repealing act of March 27, 1879, and destroy the rights of the lottery company under an act of August 11, 1868.

The prayer of the bill was that the charter granted by the act of August 11, 1868, to the lottery company might be established and declared valid and operative and binding as a contract between the State of Louisiana and the lottery company; that the said repealing act of March 27, 1879, might be declared inoperative to impair the force and effect of said contract and charter, or the franchises, rights, and faculties therein conferred; that the penal enactments contained in said repealing act might be declared unconstitutional, invalid, and inoperative, and that all the defendants might be enjoined from ordering or allowing any prosecution, arrest, or seizure of the plaintiffs or any of their servants or agents, customers, or persons in any manner connected with the lottery company for doing or performing or being concerned in any act or acts of the drawing of lotteries or the sale or purchase of tickets of said lottery company, and from interfering with them by prosecution or otherwise in the doing of any act or carrying out any purpose authorized by the charter of the lottery company.

This bill on its merits was never heard, but Judge Billings granted an injunction *pendente lite*. A grave responsibility rests upon the officers of the State government for not filing an answer and carrying the case up to the Supreme Court of the United States if unsuccessful in the lower court. By their dereliction of duty the lottery company was enabled to deceive the constitutional convention of 1879 into the belief that this mere interlocutory order was an acknowledgment by the United States court that their charter was a binding contract between the State and the corporation. To allow the case to rest in the attitude of granting provisionally an injunction *pendente lite* by the lower court was virtually to abandon all defense on the part of the State, and leads but to one conclusion in my mind.

The Legislature can not bargain away the police power of the State; and to suppress lotteries, with other forms of gambling, is within the police power. Hence an act of a State Legislature chartering a lottery for a specified term, in consideration of payments to be made to the State treasury, is not a contract protected by the constitutional provision against impairing obligations of contracts. Lotteries are not *mala in se*, but may properly be made *mala prohibita*. They are a species of gambling and wrong in their influences. The right to stop them is governmental, and to be exercised at all times by those in power at their discretion. Any one who accepts a lottery charter does so with the implied understanding that the people, through their properly constituted agencies, may take it back at any time when the public good requires, and this whether it be paid for or not. Such charter is simply a permit, good as against existing laws, but subject to future legislative and constitutional control or withdrawal. (*Stone vs. Mississippi*, 101 U. S., 814.)

I feel not the slightest hesitation in asserting that if the officers of

the State government that had charge of conducting the above case of Louisiana State Lottery Company *et al. vs. Fitzpatrick et al.* (reported in 3 Woods, 222) had done their duty in carrying out the litigation to a legitimate conclusion, the repealing act would have been declared constitutional and the lottery company, with all its infamous surroundings, would have been swept off the face of the earth. On their heads lies the blame.

I now come to the infamous swindle perpetrated on the members of the constitutional convention of 1879. As already stated, they were made to believe that the Federal court had decided that the charter granted by the act of August 11, 1868, was impregnable, and that it was their duty to make the best bargain under the circumstances with the lottery company. The following is the article of the constitution which was the result of this mistaken idea of the validity of the charter as it then existed:

The General Assembly shall have authority to grant lottery charters or privileges, provided each charter or privilege shall pay not less than \$40,000 per annum in money into the treasury of the State, and provided further that all charters shall cease and expire on the 1st of January, 1895, from which time all lotteries are prohibited in the State. The \$40,000 per annum now provided by law to be paid by the Louisiana State Lottery Company, according to the provisions of its charter granted in the year 1868, shall belong to the Charity Hospital of New Orleans, and the charter of said company is recognized as a contract binding on said State for the period therein specified, except its monopoly clause, which is hereby abrogated, and all laws contrary to the provisions of this article are hereby declared null and void: *Provided*, Said company shall file a written renunciation of all its monopoly features in the office of the secretary of state within sixty days after the ratification of this constitution.

It is on this article and the granting of an injunction *pendente lite* by Judge Billings in the case of Louisiana State Lottery Company *vs. Fitzpatrick*, that the lottery company bases its claim to possessing a charter. It is a well settled principle that legislative power can not be delegated or transferred from the Legislature to the people at large. Our governments are republican and not democratic. Laws must be enacted by the representatives of the people, and not by the people themselves. Nor can any State change this. Every State must have a "republican form of government." This is the requirement of the national Constitution, and it is complied with only by that form of State government which vests the law-making power in the representatives of the people. (*Rice vs. Foster*, 4 Harrington (Del.) 479; *Parker vs. Commonwealth*, 6 Pa. State R., 507; *Barto vs. Heinrod*, 8 N. Y., 483; *Cinn., Wilm. and Zanesville R. R. Co. vs. Commrs.*, 1 Ohio State R., 84; *Geebrick vs. State*, 5 Iowa, 491.)

I consequently maintain that the lottery company has had no legal existence since the repealing act of March 27, 1879; that it has no right to do a lottery business since that date; that its stockholders are bound *in solido* for every ticket issued since that date, and liable to refund the amount paid for such ticket; and that its agents, servants, customers, and all persons connected with it are liable to the penal provisions of said act, in accordance with the ruling of the supreme court of the State of Louisiana in a recent case which I will notice further on.

I now arrive at a stage in the history of this bogus institution which should cause the blush of shame to mantle the cheek of every patriotic citizen of this great Republic. I refer to the defense of this palpable and unmitigated fraud by a department of the National Government. The following are the particulars:

As every State in the Union has laws against lotteries, the only manner in which the Louisiana State Lottery Company could ply its nefarious business was by using the United States mails. It was thus en-

abled to violate with impunity all local statutes, and to extend the ramifications of its extensive swindling all through the land. The abuse of the mails became so great that the Postmaster-General was appealed to with the following results:

The following order was issued by the Postmaster-General to the postmaster at New Orleans, Louisiana, in these words:

POST-OFFICE DEPARTMENT,
Washington, D. C., November 13, 1879.

To the POSTMASTER, *New Orleans, Louisiana*:

It having been represented to me that a certain M. A. Dauphin at New Orleans, Louisiana, is engaged in conducting a scheme or device for obtaining money through the mails by means of false and fraudulent pretenses, misrepresentations, and promises, and being satisfied from the evidence before me that the said M. A. Dauphin is so engaged, I do hereby forbid the payment by the postmaster at New Orleans, Louisiana, of any postal money-order drawn to the order of the said M. A. Dauphin, or M. A. Dauphin, secretary, or M. A. Dauphin, post-office box No. 692. And the said postmaster is hereby directed to inform the remitter of said postal money-order that the payment thereof has been forbidden and that the sum of said money-order will be returned upon the presentation of a duplicate money-order, applied for and obtained under the regulations of the Department. And upon the same evidence the postmaster at New Orleans, Louisiana, aforesaid, is hereby instructed to return all registered letters which shall arrive at his office directed to the said M. A. Dauphin, M. A. Dauphin, secretary, or M. A. Dauphin, post-office box No. 692, to the postmasters at the office at which they were originally mailed, with the word "fraudulent" plainly written or stamped on the outside of such letters.

D. M. KEY, *Postmaster-General*.

POST-OFFICE DEPARTMENT,
Washington, D. C., February 27, 1880.

SIR: On the 13th of November, 1879, I issued an order addressed to you forbidding the payment of any postal money-order to M. A. Dauphin, or M. A. Dauphin, secretary, or M. A. Dauphin, post-office box 692, and 319 Broadway, New York, and the return of all registered letters addressed to them to the postmasters at whose offices they were mailed.

This party having brought suit against me to enjoin the performance of this order, and having appealed the same to the Supreme Court of the United States, and having this day presented the certificate of the governor and State officers of the State of Louisiana that he has complied with all the legal requirements of that State, and other evidence, and not being satisfied from the evidence submitted to me that the said M. A. Dauphin is engaged in conducting a scheme or device for obtaining money through the mails by means of false and fraudulent pretenses, representations, and promises, I hereby authorize and direct the suspension of said order of November 12, 1879, so far as to relate to said Dauphin, until the case shall have been heard and determined by the Supreme Court of the United States.

D. M. KEY, *Postmaster-General*.

To POSTMASTER, *New Orleans, La., and*
POSTMASTER, *New York, N. Y.*

The case referred to was *Dauphin vs. Key*, instituted in the supreme court of the District of Columbia, in which the Postmaster-General submitted a demurrer, which was held by the court sitting in banc as good in substance. Dauphin, who was secretary of the lottery company, appealed the case then to the Supreme Court of the United States. Postmaster-General Key then suspended the first order "until the case shall have been heard and determined by the Supreme Court of the United States," and then immediately afterward agrees to a stipulation dismissing the appeal under rule 28, thereby rendering the hearing an impossibility. Could duplicity proceed any further?

The appeal having been dismissed at the cost of the lottery company, the judgment of the lower court dismissing the case stands as a vindication of the Postmaster-General to issue such order.

The present Postmaster-General, Judge Timothy O. Howe, having failed to enforce the order of his predecessor, the House of Representatives on the 29th of March last adopted a resolution, introduced by Mr.

MANNING of Mississippi, directing him to inform it on the subject of the enforcement of this order. He replied to this resolution informing the House that he had not enforced it. The whole subject has been referred to the Committee on Post-Offices and Post-Roads, but no report has yet been made.

The following is the resolution introduced by Mr. MANNING, as above:

Resolved, That the Postmaster-General be directed to inform the House of Representatives whether an order was issued by the Post-Office Department forbidding the payment of any postal money-order or the delivery of any registered letter to M. A. Dauphin or any other agent of the Louisiana Lottery Company, and directing the return of the same to the post-offices where first obtained or deposited; if said order was issued, has there been any enforcement thereof, and, if so, for what period of time was it enforced and what was the character of the enforcement? If such an order was issued has there been any subsequent order issued by the Post-Office Department suspending the first-named order, and, if so, when was it issued and for what purpose? Is it operative now as the rule of the Department, and what are the limitations affecting it?

Deeming the reply of the Postmaster-General evasive and unsatisfactory, I addressed him several letters. The replies to two of them, which embody the two of mine answered, I now give:

POST-OFFICE DEPARTMENT, *July 19, 1882.*

SIR: I have the honor to acknowledge your communication, which reads as follows:

HOUSE OF REPRESENTATIVES,
Washington, D. C., July 10, 1882.

SIR: I have the honor to call your attention to the fact that the Louisiana State Lottery Company is, under cover of this license granted to them to use the United States mails by your Department, violating the laws of the United States.

This institution is an unmitigated fraud. It has no legal status, as its charter was repealed by act of the Louisiana Legislature, by act No. 44, promulgated March 28, 1879, entitled "An act to repeal act No. 25 of the Legislature of 1868 entitled 'An act to increase the revenues of the State and to authorize the incorporation and establishment of the Louisiana State Lottery Company, and to repeal certain acts now in force and to abolish the Louisiana State Lottery Company,'" &c., which act will be found published in the acts of Louisiana for 1880.

As I must suppose that your Department would not knowingly lend itself to such an open violation of the law, I would ask that the proper means be immediately taken to enforce the execution of the United States statutes in such case made and provided.

I am, sir, very respectfully,

E. W. ROBERTSON,
M. C. Sixth District, Louisiana.

To Hon. T. O. HOWE,
Postmaster-General.

In answer to your statement that this company "is under cover of this license granted to them to use the United States mails, by your Department, violating the laws of the United States," I must answer that no license has ever been granted to this company or any other lottery company by the Post-Office Department to use the mails for the purpose of carrying on its business.

Section 3894, Revised Statutes, is in these words:

"No letter or circular concerning illegal lotteries, so-called gift-concerts, or other similar enterprises, offering prizes, or concerning schemes devised and intended to deceive and defraud the public for the purpose of obtaining money under false pretenses, shall be carried in the mail. Any person who shall knowingly deposit or send anything to be conveyed by mail in violation of this section shall be punishable by a fine of not more than \$500 nor less than \$100, with costs of prosecution."

It would therefore not be in the power of this Department to authorize the use of the mails by any lottery company, whether legally organized or whether an illegal and fraudulent company, for the purpose of distributing letters and circulars concerning lotteries.

The error into which you seem to have fallen doubtless results from the fact that on the 13th day of November, 1879, Postmaster-General Key issued an order forbidding the payment of any postal money-order to M. A. Dauphin, and directed the return of all registered letters addressed to him to the postmaster at whose office they were mailed. This order was issued under authority conferred upon the Postmaster-General by section 3929 and section 4041 of the Revised Statutes.

On the 27th day of February, 1880, the following order was issued :

POST-OFFICE DEPARTMENT,
Washington, D. C., February 27, 1880.

TO POSTMASTERS at New Orleans, La., and New York, N. Y. :

On the 13th day of November, 1879, I issued an order addressed to you forbidding the payment of any postal money-order to M. A. Dauphin, or M. A. Dauphin, secretary, or M. A. Dauphin, post-office box 692, or 319 Broadway, New York, and directing the return of all registered letters addressed to them to the postmaster at whose office they were mailed.

This party having brought suit against me to enjoin the performance of this order, and having appealed the same to the Supreme Court of the United States, and having this day presented the certificate of the governor and State officers of the State of Louisiana that he has complied with all the legal requirements of that State, and other evidence; and not being satisfied from the evidence submitted to me that said M. A. Dauphin is engaged in conducting a scheme or device for obtaining money through the mails by means of false and fraudulent pretenses, representations, and promises, I hereby authorize and direct the suspension of said order of November 13, 1879, so far as relates to said Dauphin, until the case shall have been heard and determined by the Supreme Court of the United States.

D. M. KEY, *Postmaster-General.*

You will observe that this suspension of the order of November 13, 1879, against the registered letters and money orders of M. A. Dauphin, left him in exactly the position which he had occupied prior to the issue of the order. It was a declaration by the Postmaster-General that he was not satisfied from the evidence submitted to him that said M. A. Dauphin was engaged in conducting a scheme or device for obtaining money through the mails by means of false pretenses, representations, and promises.

The prohibition contained in section 3894 of the Revised Statutes had never been suspended but remained and remains still in force. There has therefore been no license granted to any person, company, or corporation to send any letter or circular concerning lotteries through the mails.

In regard to the further statement made by you of the Louisiana State Lottery Company that "this institution is an unmitigated fraud," I must only answer that no proof has been furnished to me of this fact, and I am not authorized to act upon the simple statement unaccompanied by evidence which shall satisfy me that it is "a fraudulent lottery."

Regarding your statement that this company has no legal status, as its charter was repealed by act of the Louisiana State Legislature, I must refer you to the decision of the supreme court of the State of Louisiana, which is contained in volume 38, commencing at page 719 of the Louisiana Annual Reports, 1880. This decision was rendered in the "State ex. rel. Carcassee vs. Judge First District Court of Orleans." The opinion and decree of the court was pronounced by Mr. Chief-Justice Bermudes: In this decision, the effect of the law to which you have referred, and which was approved March 27, 1879, is fully considered, and it is held, that while "its evident object was to forbid absolutely the vending of lottery tickets in the State, and to accomplish that object * * * it went so far as to withdraw the charter of a corporation, up to then in existence, and which had legal authority to deal in the lottery business," yet that section 167 of the constitution of the State of Louisiana, which was ratified by a vote of the people at the election held on the 2d day of December, 1879, more than eight months after the passage of the statute cited, operated "clearly to repeal that portion of the act which contemplated the destruction of the corporation named in the article, and which was previously authorized to deal in lottery tickets, to authorize the further existence up to 1895 of that institution, but to strip it of its pretensions to a monopoly, apparently accorded it by the act under which it was organized." * * * "The insertion in article 167, declaring null and void all laws contrary to its provisions, must be viewed as intended to retain in force the act of 1879, in so far as it was not derogated from by that constitutional enactment, and to lend assistance to its enforcement for the protection of organizations chartered by the State, which shall, as a prerequisite, have paid the required license for the relief of the State and of its charitable institutions." * * * "The Louisiana State Lottery Company previously in existence shall continue its operations on abdicating all its pretensions to a monopoly and on complying with the requirements touching the payment of the license."

In an opinion subsequently rendered by the chief-justice on an application for a rehearing in this case, this language was used:

"By the act of 1879 an absolute prohibition was enacted against the dealing in lottery business and a penalty was provided for infringement of the prohibition.

"By article 167 the absolute prohibition was changed into a relative one. Blended together, act of 1879 and article 167 mean that there shall hereafter be no unrestrained dealing in lottery operations under penalty of fine and imprisonment, but that dealing in the lottery business will be tolerated when carried on by corporations chartered by the State and paying an annual license of no

less than \$40,000; consequently, that whoever shall otherwise deal in that sort of business without having been chartered and without having paid the license shall be liable to punishment.

"Article 167 formally recognizes the Louisiana State Lottery as an institution chartered by the State, and determines the term of its existence, but without any right of monopoly.

"The framers of the constitution did away with the exclusive privilege, accorded previously to that organization, and provided that hereafter all persons wishing to deal in the lottery business shall have the right to do so, as well as the Louisiana State Lottery Company, on obtaining a charter from the State and paying a license as *pure quietus*. This was done to place all on a footing of equality. * * * No one can claim to enjoy the privileges exercised by the Louisiana State Lottery Company without, like it, obtaining a charter and paying a license. * * *

"In the present instance the act of 1879 was not absolutely and unconditionally repealed. It was relatively or conditionally repealed. * * *

"The penal provisions will be inoperative against individuals dealing in that business in the name of chartered institutions paying license.

"The court has thus construed again the act of 1879 and article 167, and has done so in their mind *in favorem libertatis civis*."

It would seem from these decisions of the supreme court of Louisiana that so far as it was within the power of the State court to adjudicate upon the legal status of the Louisiana State Lottery Company its existing incorporation and legal power to act under its original charter are adjudicated.

The effect of this judgment by the supreme court of Louisiana is expressed by the Supreme Court of the United States in the case of *Secomb vs. Railroad Company*, 23 Wallace, 108, in this language: "When the question is whether under the constitution and laws of a particular State a company professing to be corporate is legally so, this court will receive as conclusive of the question the decision of the highest court of the State deciding, in a case identical in principle, in favor of a corporate business."

To the same effect are the decisions in the cases of *Randall vs. Bingham*, 7 Wallace, 523; *Gut vs. State*, 9 Wallace, 35; *Webster, vs. Cooper*, 14 Howard, 488. Under these decisions my three immediate predecessors in office have felt themselves compelled to recognize the legal corporate existence of the Louisiana State Lottery Company, and I do not feel myself justified in withholding my approval of the conclusion reached by them.

A certificate from the office of the secretary of state for the State of Louisiana, duly authenticated, certifying that the renunciation of the monopoly features of the Louisiana State Lottery Company, as contained in its charter, had been duly filed in that office, has been exhibited to me. There is also a certificate from the auditor of state that this company has paid into the treasury the sum required by law.

The company having thus brought itself within the express terms of the decision of the supreme court of the State of Louisiana, recognizing its existence and declaring that it is authorized to do business until the year 1895, I can not, however willing I might be, bring my mind to accept your conclusion regarding this company that "it has no legal status."

Until, therefore, it can be shown by evidence to be a "fraudulent lottery" I have no official jurisdiction over it.

Your verbal reference to the decision pronounced by the Supreme Court of the United States, in the case of *Stone vs. The State of Mississippi*, wherein it was held that the charter granted to the lottery company was not protected from hostile subsequent legislation on the ground that the charter constituted a contract between the State and the company, has no application to the present case, inasmuch as the latest action of the authorities of the State of Louisiana has, under the opinion of the supreme court of that State, been favorable to the continued existence of that corporation.

Very respectfully,

Hon. E. W. ROBERTSON,
House of Representatives.

T. O. HOWE, *Postmaster-General*.

POST-OFFICE DEPARTMENT,
Washington, D. C., August 1, 1882.

SIR: I have the honor to acknowledge the receipt of the communication of which the following is a copy:

HOUSE OF REPRESENTATIVES,
Washington, D. C., July 28, 1882.

SIR: I have the honor to acknowledge the receipt of your communication of the 19th instant, and in reply would beg to inclose the within slip cut from the Daily Post of this date as evidence: First, that section 3894 R. S. is not enforced, the inclosed being a circular addressed to the public (act March 3, 1879, chapter 108, section 18, 20 Statutes at Large, 360) and circulated by newspapers carried in the mail; second, that neither section 3929 nor 4041 R. S. are enforced, as the within

shows that "M. A. Dauphin" is engaged in conducting a (new and improved) scheme for the distribution of money (see price of ticket and capital prizes) by a drawing (at New Orleans, August 8, 1882) and solicits orders to be sent by registered letter or money-order by mail, to be addressed to the said M. A. Dauphin, New Orleans, Louisiana.

In conclusion I respectfully reiterate my request that proper means be taken to enforce the execution of the statutes of the United States in such case made and provided.

Very respectfully,

E. W. ROBERTSON,
M. C. Sixth District Louisiana.

Hon. T. O. HOWE,
Postmaster-General.

The slip you inclose is an advertisement published in a daily newspaper, and does not, in the judgment of this Department, when thus published come within section 3894, Revised Statutes, which reads as follows:

"No letter or circular concerning illegal lotteries, so-called gift-concerts, or other similar enterprises, offering prizes, or concerning schemes devised and intended to deceive and defraud the public for the purpose of obtaining money under false pretenses, shall be carried in the mail. Any person who shall knowingly deposit or send anything to be conveyed by mail in violation of this section shall be punishable by a fine of not more than \$500 nor less than \$100, with costs of prosecution."

A "letter or circular" is defined in section 18, act of March 3, 1879, 20 Statutes, page 360, which section is in this language:

"The term 'circular' is defined to be a printed letter which, according to internal evidence, is being sent in identical terms to several persons. A circular shall not lose its character as such when the date and the name of the addressed and of the sender shall be written therein, nor by the correction of mere typographical errors in writing."

This Department would not feel itself authorized to exclude from the mails under the statute in question a regular legitimate newspaper because it contained among the numerous other advertisements that of a lottery company. This section, as you will observe, imposes a penalty when a letter or circular concerning lotteries is knowingly deposited to be conveyed by mail. That penalty of course can only be enforced in a court. It can not be enforced by the Post-Office Department.

Your reference to sections 3929 and 4041, Revised Statutes, is not understood. These sections, as you are aware, apply only to a person who is "engaged in conducting any fraudulent lottery," &c.

In my former letter I advised you that this Department was without "evidence satisfactory" to the Postmaster-General that the Louisiana State Lottery is a fraudulent lottery, and you were advised that upon presenting proof that such was the case the Department would act under the statute. The mere fact that a lottery company advertises in a public newspaper, and solicits the sending of orders by registered letters or of money-orders by mail, does not authorize the Postmaster-General to issue his order directing the return of such registered letters to the sender, or the refusal to pay money-orders thus sent. The additional fact that a lottery company so advertising is a fraudulent lottery must be proved by satisfactory evidence before the Postmaster-General has jurisdiction of the matter.

Very respectfully,

T. O. HOWE, *Postmaster-General.*

Hon. E. W. ROBERTSON,
House of Representatives, Washington, D. C.

HOUSE OF REPRESENTATIVES,
Washington, D. C., August 5, 1882.

SIR: I have the honor to acknowledge the receipt of your communication of 1st instant, and in reply would beg to state that I most emphatically protest against the construction of your Department of section 3894 Revised Statutes, as contained in said communication.

It has never been my intention of asking you to construe section 3894 as a penal statute. This I am very well aware is totally out of your province, and can only be done by the judiciary branch of the Government. I maintain wherever it is made your duty to construe this statute in accordance with the intent which appears to have actuated Congress in passing same, this intent has been declared by the highest judicial tribunal of the United States. Chief-Justice Waite, speaking for the Court, uses this language in rendering the decision in *Stone vs. Mississippi*, 101 United States, 819:

"There is now scarcely a State in the Union where lotteries are tolerated, and Congress has enacted a special statute, the object of which is to close the mails against them." (*Revised Statutes*, section 3894; 19 *Statutes at Large* 90, section 2.)

When the Supreme Court of the United States pronounced this as law, names

this identical statute, and declares the intent of Congress in enacting same "to close the mails against them," to wit, "lotteries," I can not but be surprised that your Department pursues a course which, while barring the mail against a slight infraction of the letter of the law, yet utterly disregards the spirit by allowing the evil to be practiced with impunity so long as it is done on the most extensive scale and wholesale plan. It is emphatically "straining at a gnat and swallowing the camel."

There is no principle better established by a long series of decisions of the Supreme Court of the United States than that the features of a particular course of legislation shall always be regarded to make apparent the intentions of Congress in enacting any special statute, such as the above decision declares this to be. Now, can you deny that Congress could have had any other intention, namely, "to close the mails against them," and in allowing their advertisements to go through the mails are you not plainly permitting not only a violation of the law in the spirit of the enactment, but as construed by the highest authority in the land?

The imposition of the penalty was to make the previous words of the statute still more strong as an express prohibition, and not to allow by a strained and false technical construction what the law forbids to be done directly to be made lawful by being done indirectly. The slip inclosed is an open printed circular letter addressed to the public, and signed by M. A. Dauphin, and that it is a paid advertisement in a "regular legitimate newspaper," only increases the turpitude of the transaction. It is not only an open defiance of the statute, but in no other way could such a communication reach so large a number of persons and exert a greater demoralizing influence upon the people. Does the fact of inserting said communication in a newspaper do away with the policy of the law as distinctly enunciated by a statutory prohibition? Is it your intention to crush the circulation when confined to a form which can only reach comparatively the few, yet allow free scope in the use of the great channel of communication to the many?

In regard to sections 3929 and 4041 Revised Statutes please state wherein you do not understand me. Your limitation as to the construction of these statutes "to apply only to a person who is conducting any fraudulent lottery, &c.," is too indefinite, and I await further explanation on your part before replying to that part of your communication.

In conclusion, I would beg to state that such is my confidence in the justice of my position that I feel convinced that on an order being issued from your Department that such journals as contained lottery advertisements would be excluded from the mails, there is not a court in the country possessing jurisdiction that would listen to an application for relief until such advertisements were withdrawn.

Very respectfully, your obedient servant,

E. W. ROBERTSON,
M. C. Sixth District Louisiana.

Hon. TIMOTHY O. HOWE,
Postmaster-General.

This last letter still remains unanswered, and this fact we deem an admission of the justice of our cause.

As the Postmaster-General quotes extensively the latter part of the opinion of Bermudez, C. J., in the "*State ex rel. Carcasse vs. Judge of the First District Court of Orleans* (38 La. Ann., 719), we append that portion of the opinion omitted:

State ex rel. Carcasse, judge of the first district court, 32 La. Ann., 719 *et seq.*

Bermudez, C. J.: The relator was prosecuted before the first district court for the parish of Orleans for having in his possession, with intent of selling the same, a fractional part of a lottery ticket, the sale of which, it is alleged, is forbidden in this State under penalty of law.

He pleaded guilty, subsequently moved to withdraw his plea, but was not allowed that privilege. Sentence was about to be passed upon him when he applied to this court for relief. The case not being one appealable in character, the court granted a *certiorari*, a provisional restraining order, and a rule to show cause why a perpetual prohibition should not issue. The object of the restraining order was to prevent the judge of the first district court from passing sentence on the relator.

The relator alleged, in justification of the complaint lodged here and of relief sought, that the law under which he was prosecuted, pleaded guilty, and was about to be sentenced, and which he had believed was in force when he refused to defend himself and admitted the charge, had become a dead letter ever since the adoption of the present constitution, which has effectually repealed it in its entirety.

The law in question was approved March 27, 1879, and bears No. 44 of the acts of that year. It contains six sections. Its evident object was to forbid absolutely the vending of lottery tickets in this State, and in order to accomplish that

purpose it provided for the infliction of fine and imprisonment on the violators of its prohibitions. It was intended to have a general effect throughout the State, and made no exceptions whatever. It went so far as to withdraw the charter of a corporation up to then in existence, and which had legal authority to deal in the lottery business.

The article of the constitution relied on as repealing this law is in the words following:

"The General Assembly shall have authority to grant lottery charters or privileges: *Provided*, Each charter or privilege shall pay not less than \$40,000 per annum in money into the treasury of the State: *And provided further*, That all charters shall cease and expire on the 1st of January, 1895, from which time all lotteries are prohibited in the State. The \$40,000 per annum now provided by law to be paid by the Louisiana State Lottery Company, according to the provisions of its charter, granted in the year 1868, shall belong to the Charity Hospital of New Orleans, and the charter of said company is recognized as a compact binding on said State for the period therein specified, except its monopoly clause, which is hereby abrogated; and all laws contrary to the provisions of this article are hereby declared null and void: *Provided*, Said company shall file a written renunciation of all its monopoly features in the office of the secretary of state within sixty days after the ratification of this constitution."

The intention of the convention of 1879 was clearly to repeal that portion of the act which contemplated the destruction of the corporation named in the article and which was previously authorized to deal in lottery tickets, to authorize the further existence up to 1895 of that institution, but to strip it altogether of its pretensions to a monopoly apparently accorded it by the act under which it was organized. It was the intention of the convention to place on a footing of equality with this corporation all other individuals who might desire to deal in the same business, but on condition, upon being chartered by the State, of the payment of an annual license of not less than \$40,000 to the State. In order to render compliance with this condition obligatory and effectual it was necessary that there should be attached a sanction to the law. The convention thought it unnecessary to embody one expressly in the article in question, for the reason that it already was in existence in a statute then in force, *i. e.*, in the act of 1879 already mentioned.

It is expressly provided by that article 167 that all laws contrary to its provisions are declared null and void.

Of course such portions of that law as were inconsistent with the article of the constitution were repealed, but is the act of 1879 in each and all of its parts repugnant to the article of the constitution under consideration? The portions which it is claimed were repealed are those which prohibited absolutely, without any exception, and under all circumstances, the vending of lottery tickets, and which inflicted a penalty for an infringement of prohibition.

The law does not favor repeals by implication.

The insertion in article 167 declaring null and void all laws contrary to its provisions must be viewed as intended to retain in force the act of 1879, in so far as it was not derogated from by that constitutional enactment, and to lend assistance to its enforcement for protection of organizations chartered by the State, which shall, as a prerequisite, have paid the required license, for the relief of the State and of its charitable institutions.

This court has no power to express any opinion or comment upon the morality or immorality of this constitutional provision. Its duty is to construe and apply the law as it finds it in the organic and statutory enactments.

We find no irreconcilable discrepancy between the act and the article of the constitution. We find that the constitution has merely derogated from the general prohibitory provisions of the act by making exceptions and conceding authority to the General Assembly to grant lottery charters or privileges on terms to be complied with as conditions precedent and *sine quibus non*, placing them all on a footing of equality after such chartering and fulfillment of terms and conditions.

Construing the act of 1879 and the article of the constitution together, so as to give full effect to each and all the parts of both, and blending them together, we consider that the law of Louisiana on the subject of vending of lottery tickets simply is:

The sale of lottery tickets in this State is absolutely prohibited unless by organizations chartered by the State which, before dealing in that kind of speculation, shall have paid an annual licence of not less than \$40,000 to the State. There shall exist no monopoly for the sale of such tickets or doing of such business. Individuals violating the law by selling lottery tickets or dealing in the lottery business without having previously obtained a charter and paid the required license in the manner provided by law shall be prosecuted and punished by fine and imprisonment. The Louisiana State Lottery Company previously in existence shall continue its operations on abdicating all its pretensions to a monopoly and on complying with the requirements touching the payment of the license.

Finding as we do that the punitive section of the act of 1879 has not been abrogated as far as it affects individuals selling lottery tickets, or dealing in the

lottery business, who have not previously obtained a charter and paid the required license, we conclude that the relator is not entitled to protection for the reasons alleged by him against the apprehended sentence of fine and imprisonment.

It would be truly unjust to permit individuals who have not formed themselves into a corporation chartered by the State and not paid any license to enjoy the same privileges as those awarded to a corporation chartered by the State and which has paid the required license.

It is therefore adjudged that the restraining order heretofore made be dissolved, and that the application for a perpetual prohibition be refused at the cost of relator.

This case of *State ex. rel. Carcass vs. Judge of First District Court*, reported in 32 La. Ann., 719, which the Postmaster-General quotes with such gusto in his defense of this unmitigated fraud and swindle, was a suit got up for the purpose, through a decision by the supreme court of the State of Louisiana, to give a quasi-legal status to the lottery company. It utterly failed in its object, as the point of charter or no charter was not before the court. The syllabus contains the only matter which was settled, that "the punitive section of act No. 44 of the Legislature of 1879 relative to the sale of lottery tickets in this State was not abrogated by article 167 of the constitution." This is undoubted law, as the constitution under no republican form of the government can abrogate any act of a Legislature. In such a case it can not enforce itself, and, as already explained, the only manner in which the constitution could be enforced is by an act of the Legislature.

It is a well-settled principle of law that the abrogation of the repeal of a statute does not revive the original statute, even if the abrogation was legal and constitutional, which in this case we have shown that it was not. I defy the lottery company through any process of legal reasoning to prove that it has ever had a legal existence since March 27, 1879, the date of the repealing statute, and this it well knows and has tried "to galvanize the corpse" through an interlocutory order of a Federal Judge and an article of a State constitution obtained after it was a nullity. So convinced is it of this, that in a recent suit which it instituted against Commissioner Morgan, of the District of Columbia, for damages for closing its agency in Washington, that it has itself asked that a demurrer filed by defendant be sustained, and from which it has taken an appeal to the Supreme Court of the United States. There it will play the same game as it did in the case of *Dauphin vs. Key*, and by suggesting at the proper time that defendant has gone out of office will have the appeal dismissed. It is by such subterfuges that it attempts to keep up its credit by the semblance of being a valid institution having a legal existence with the right to plead and be impleaded.

There is a feature of the lottery which has deluded many in submitting to its exactions. I refer to the tax which it pays to the State as a license to transact its nefarious business. But when we reflect on the paltry sum thus paid and the enormous amount stolen from the community under cover of such payment, we stand appalled at the gross ignorance displayed in granting such a franchise for the ostensible purpose of raising revenue to defray the expenses of government. Where the State receives thousands, millions are paid to the lottery by the votaries of this unfortunate species of gambling. The money though thus extracted represents but a small value when we remember the greater evil of idleness, dissipation, licentiousness, and crimes entailed on the community by the existence of this baneful institution.

The Louisiana State Lottery Company during the past fourteen years has paid the sum of but \$560,000 to the State; but think of what an amount of misery and wretchedness has it caused during that period of

time. This paltry sum sinks into insignificance when we regard this amount as payment for the privilege of extracting millions from that portion of the community which can least afford to part with the fruits of their hard-earned toil and labor.

Such is the history of this institution which has brought the fair name of a great Commonwealth to be but a by-word of contempt to her sister States and of hissing and scorn to all the good people throughout the length and breadth of this great Republic. Knowing no party fealty, but managed with consummate political ability, its president has boasted "that there was not a man in the State of Louisiana that he could not buy;" and it has extended the field of that proud vaunt by invading the capital of the nation. With one hand it bids defiance to the judicial power of the District, while with the other it corrupts the officials of a Department, and this under the eyes of an Executive who is sworn to see that the laws of the United States are executed. Defeated in the lower court, it has through the connivance of the officers of the Department of Justice succeeded in making a mockery and delusion the great remedy of an appellate court.

The doctrine of State rights, which has deluged this continent with blood, it invokes only to place it in a position that it may the more easily violate with impunity the laws of every State in the Union. It would be supposed that in this career of lawlessness and rapine it would seek assistance from its sister institutions of like infamy, but no entangling alliance is allowed to impede its course of meteoric effulgence. It stands alone in its infamy, and has succeeded in crushing every rival, not only in its own domain, where, *imperium in imperio*, it rules with an iron hand, but throughout the breadth of the land it has secured by the use of the mails a virtual monopoly of its nefarious business. In its rapacity of power it is as ready to face the whole power of the General Government in all its might as to stifle the charitable efforts to raise funds to support the widows and orphans of the dead soldiers of the recent civil conflict. It looms up in solitary grandeur amid the wrecks of carpet-bag rule as the last surviving institution made more powerful by a revolution which was inaugurated under the banner-cry of reform, the futility of which it makes by its continued existence so hideously apparent. Caring for no principle of honesty, basing its own existence on corruption and bribery, it ruthlessly slaughters politically every opponent who has the independence and manliness to place himself in its path.

An honest administration in the State of its original creation it hurled from power, and a convention which was called for this purpose by its influence deliberately repudiated the debt of the same State at its imperious dictation. Outraging every sense of honor and propriety in its own action, it was jealous of the fair name of the Commonwealth and never rested until it was brought to its own dead level of degradation. In its original formation it reversed the adage of "honor among thieves," as its first action was to allege its own turpitude to escape the payment of money advanced to procure a charter by bribing the members of a carpet-bag legislature. It has now existed as a blot on the body-corporate for over fifteen years, and no cause so mighty has ever operated to bring every branch of government, both State and national, into more general disrepute. The reports of the courts, both State and national, show the general demoralization: the ermine of the judge sullied, the administration of justice prostituted to the most unworthy ends; the press, that palladium of liberty, bought up or muzzled by fear or ignorance; the official head from governor to constable dependent on its good-will; every office-seeker at its beck; the whole Commonwealth

prostrate at its feet; no institution existing but at its mercy. This is not an exaggerated condition of a once-powerful sovereignty.

Employing the very highest talent, counting in the ranks of its advocates, from a former justice of the Supreme Court of the United States whose judicial reputation is only equalled by the vastness of his judicial knowledge of the great principles of equity down to the ambitious young practitioner of but yesterday's standing at the bar, can we be astonished in contemplating this array of legal talent, that if when reduced to extremity of the efforts of conscientious and virtuous citizens, who wished to remove the stigma from the State, that it has triumphed and plucked victory from the very jaws of defeat? Let an opponent dare assert himself and its well-drilled cohorts move as an irresistible phalanx to crush him. If his candidature is not strangled in the nominating convention, the whole power of the institution is straightway carried over to the other party to effect his defeat. Acknowledging no other object than the perpetuation of its rule, it rides over every law, human and divine, to effect its purpose and its proud boast that no man of either party can have a political future in the State of Louisiana that refuses to obey its behests or that does not bear it hearty and unswerving allegiance.

There are gentlemen in this House who affect to be surprised at my statement that the State of Louisiana is completely in the power of this swindling institution. They would insinuate that this state of affairs which I have attempted to portray is only the creation of a diseased and distorted imagination. But remember that one of the greatest levers by which it acts is the total ignorance that the people are kept as to its workings. Its unscrupulous audacity is only equalled by the secrecy of its counsels. It acts without warning, it strikes without premonition, and the cries of its victims are drowned in the arrogant exultations over its success. It possesses the power, which it ruthlessly exerts, to plunder the ignorant and unwary of sixty millions, and its dupes may be found in every corner of this vast empire. A monopoly of the worst description, and backed by both national and State authority, it laughs to scorn the impotent efforts of its enemies to arrest it in its course. Every official, judicial, legislative, and executive, is at its beck, and those who dispute its power are soon removed to give place to more pliant tools. Where gold can not reach it finds in a venal press the way to crush and destroy.

No power is too high to attack, no means too low to use, when it suits the policy of its action after being once determined. It illustrates the saying of Lord Coke, "it not only possesses no soul, but it is equally destitute of all pity, all mercy, and all remorse." Once entangled in its meshes there is no escape for its dupes. A bribe once accepted, the threat forever hangs over the devoted head of its victim. And strangest of all, the momentum of its power, contracted by a long series of years of wrong-doing with impunity, has been so great that it can exist in defiance of all law and defies the proof that it exists without a charter; it makes no public statements of its affairs, permits no inspection of its books, and in its grasp of monopoly exercises all the police functions of an independent sovereignty, allied with the inquisitorial power of a secret tribunal. It is a jealous mistress and allows no rival within the fair domain of the State. None can plunder its subjects; it keeps their goods and possessions under guard against the attacks of kindred institutions.

But if the press is venal, gentlemen may point to the pulpit as the forum on which the attack on this hydra-headed monster may be urged. I can dismiss this subject with but a single sentence. This institution has been in existence for over fifteen years, and I have yet to hear of the

first sermon preached against this crying sin. If one has been delivered in my State I have neither read nor heard of it. The right reverend father in God the archbishop and through all the grades of the ecclesiastical hierarchy down to the humble preacher of the circuit all ignore the existence of this great evil gnawing at the very vitals of all revealed religion. I have been arraigned as a troubler in Israel, my action denounced as an outrage on the doctrine of State rights in bringing the influence of the General Government to bear on a State institution in depriving it of the use of the mails. They forget that by this use of the mails this bogus State institution has put at defiance the power of every other State in the Union by violating with impunity the laws enacted to bridle its ungovernable license.

In conclusion, I reiterate the assertion that the lottery company has had no legal existence since March 27, 1879; that its charter was then repealed by the Legislature in the exercise of its police powers, and which it had a perfect right to do in accordance with decisions of the Supreme Court of the United States. This charter can only be revived in the same manner that it was repealed, by an act of the Legislature, and which has never been passed. The idea that an interlocutory order of a judge in a Federal court or an article of the State constitution could effect this is preposterous. Even if the article had legislative force, which it has not, the repeal of the act of 1879 did not revive the act of 1868. These are self-evident facts, and which would soon solve the question on an information filed by the attorney-general of the State of Louisiana in the nature of a writ of quo warranto.

We thus see that this lottery company is only sustained by the use of the mails in transacting its nefarious business, which supplies the means to employ a horde of counsel to conceal their utter want of legal entity, as also through its extensive advertising to evade exposure of the manner in which that business is conducted. I close with the hope that my unhappy State will soon be delivered from the poisonous fangs of the deadly reptile which has been fastened upon the body corporate through so many dreary years, and that brighter prospects await her in the immediate future. "Bow thy heavens, O Lord * * * cast forth lightning, and scatter them; shoot out thine arrows, and destroy them."